

AMENDED IN SENATE APRIL 22, 2010
AMENDED IN SENATE APRIL 13, 2010
AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 1188

Introduced by Senator Wright

February 18, 2010

An act to add Section 3049 to the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

SB 1188, as amended, Wright. Child custody: disabled parent.

Existing law requires a court to award custody of a child according to the best interest of the child, and further requires a court to grant reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child. Existing law requires a court, when determining the best interest of the child, to consider the health, safety, and welfare of the child, among other factors.

This bill would provide that ~~there is a rebuttable presumption affecting the burden of proof that~~ a parent's disability may not form the basis for an order granting child custody or visitation to another party, or for an order imposing a condition or limitation on custody or visitation, as specified, ~~unless that other party establishes by clear and convincing evidence~~ *there is a finding* that an award of custody or visitation to, or a condition or limitation on custody or visitation by, the disabled parent would be detrimental to the health, safety, and welfare of the child *not be in the best interest of the child*, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3049 is added to the Family Code, to
2 read:
3 3049. In any proceeding to determine child custody or visitation
4 under this part, in which at least one parent is disabled as defined
5 by the Americans with Disabilities Act of 1990 (42 U.S.C. Sec.
6 ~~12101 et seq.~~), ~~there is a rebuttable presumption affecting the~~
7 ~~burden of proof that 12101 et seq.~~, the disability of that parent
8 may not form the basis for an order granting custody or visitation
9 to another party, or for an order for imposing any condition or
10 limitation on an award of custody to or visitation by the disabled
11 parent, ~~unless that other party establishes by clear and convincing~~
12 ~~evidence that there is a finding by the court that a grant of custody~~
13 ~~or visitation to, or a condition or limitation on custody or visitation~~
14 ~~by, the disabled parent would be detrimental to the health, safety,~~
15 ~~and welfare of the child. This section applies not be in the best~~
16 ~~interest of the child. This section applies~~ to any proceeding
17 regarding custody or visitation, including, but not limited to, a
18 request for a modification of an existing order for custody or
19 visitation.